

GAHC010071722024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/41/2024

PRADIP KR. SARKAR AND ANR
S/O- LATE PRAFULLY KUMAR SARKAR, R/O- PANDU, LOCO COLONY, P.S.
JALUKBARI, GUWAHATI-781012.

2: SUTAPA SARKAR
W/O- ANISH BHATTACHARJEE
R/O- 1A AT FIRST FLOOR OF THE BUILDING AT JAYMATI NAGAR ROAD
ABOKASH VILLA BYE LANE-7
P.S. JALUKBARI
P.O. PANDU
DIST. KAMRUP(M)
ASSA

VERSUS

ARUN CHAKRABORTY AND 10 ORS.
S/O- SRI SUSHIL CHAKRABORTY, R/O- TRINGULAR COLONY, P.S.
JALUKBARI, P.O. PANDU, MALIGAON, DIST. KAMRUP(M), ASSAM

2:MRIDULA CHAKRABORTY
W/O- SRI ARUN CHAKRABORTY
R/O- TRINGULAR COLONY
P.S. JALUKBARI
P.O. PANDU
MALIGAON
DIST. KAMRUP(M)
ASSAM

3:ARUP CHAKRABORTY
S/O- SRI ARUN CHAKRABORTY
R/O- TRINGULAR COLONY
P.S. JALUKBARI
P.O. PANDU
MALIGAON

DIST. KAMRUP(M)
ASSAM

4:SUBRAT SARKAR
S/O- LATE AMIYA RANJAN SARKAR
R/O- VILL.- NF RAILWAY BUNGLOW NO. 157
GOSALA
P.S. GOSALA
P.O. MALIGAON
DIST. KAMRUP(M)
ASSAM

5:MEDINI BORA
S/O- LATE BHUBAN CHANDRA BORA
R/O- VILL.- GHANHI BHATIKURI
P.S. RAHA
P.O. GHANGI BHATIKURI
DIST. NAGAON
ASSAM
PIN- 782144.

6:SOUGATA KUMAR GHOSE
S/O- LATE SUBRATA KUMAR GHOSE
R/O- RLY. QTR. NO. 314/B
HOSPITAL COLONY
BAMUNIMAIDAM
GUWAHATI-21.

7:SUBHNDU PAUL
S/O- LATE BARENDRA NARAYAN PAUL @ AMARENDRA PAUL
R/O- KALAIBOND
BADARPUR GHAT
BADARPUR
P.O. BADARPUR
DIST. KARIMGANJ
ASSAM

8:SURAJIT DAS
S/O- SRI SAMARENDRA NATH DAS
R/O- HOUSE NO.22
ANANDA NAGAR
BYE LANE NO. 1
P.O. DISPUR
DIST. KAMRUP(M)
ASSAM
GHY-5.

9:ANISH BHATTACHARJEE

S/O- LATE ASISH BHATTACHARJEE
R/O- 1A AT FIRST FLOOR OF THE BUILDING AT JAYMATI NAGAR ROAD
ABOKASH VILLA BYE LANE-7
P.S. JALUKBARI
P.O. PANDU
DIST. KAMRUP(M)
ASSAM

10:MANIK SARKAR
S/O- LATE PRAFULLA KUMAR SARKAR
R/O- TRIANGULAR COLONY
PANDU
GUWAHATI
P.S. JALUKBARI
GHY-781012
ASSAM

11:PINKU PAUL
S/O- LATE CHITTA RAJAN PAUL
R/O- FLAT NO. 2 E NCS PALLAZO
ADABARI
P.S. JALUKBARI
GUWAHATI-781014
ASSA

Advocate for the petitioner(s): Mr. P Sarmah

Advocate for the respondent(s): Mr. D Nandi

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

10.05.2024

This is an application under Section 115 of the Code of Civil Procedure, 1908 (for short, the Code) challenging the order dated 11.01.2024 passed in Title Suit No.481/2023, whereby the Court of the learned Civil Judge No.2

(Sr.Division), Kamrup(M) Guwahati had rejected the petition filed by the petitioner to file the written statement against the counter claim.

2. Taking into account that the order dated 11.01.2024 is not revisable in terms with Section 115 of the Code, this Court for the interest of justice converts it to a proceeding under Article 227 of the Constitution.

3. This Court has taken note of the fact that on 08.09.2023 the defendants have filed a written statement-cum-counter claim. However, the plaintiff did not file any written statement and filed a petition at a later stage on 11.01.2024, seeking further time for filing the written statement.

4. This Court has enquired with Mr. P Sarmah, the learned counsel appearing on behalf of the petitioner as to why the written statement was not filed. The learned counsel submitted that the counsel appearing on behalf of the plaintiffs before the learned Trial Court did not receive the written statement cum counter claim from the records and under such circumstances, the petitioners were not aware of the filing of a counter claim.

5. The learned counsel further submitted that the written statement to the counter claim is ready and can be filed on such date as this Court may fix.

6. Upon hearing the counsels appearing on behalf of the parties, this Court is of the opinion that the non-filing of the written statement to the counter claim is not the fault on the part of the plaintiffs, but is on account of the negligence on the part of the counsels representing the plaintiffs in the suit. It being well settled that on account of the conduct of the counsels, the party should not suffer, as such, it is the opinion of this Court that the plaintiffs ought not to have been debarred from filing the written statement. Accordingly, this Court interferes with the order dated 11.01.2024 thereby permitting the plaintiffs to

submit their written statement by 15.06.2024 before the learned Trial Court.

7. This Court, however, is also mindful of the fact that on account of the negligence on the part of the counsels appearing on behalf of the plaintiffs, the proceedings in the suit had been delayed and further the instant proceeding had arisen. Under such circumstances, this Court is of the opinion that some cost has to be imposed in the interest of justice.

8. Taking into account that the plaintiffs were not at fault, however, it was the fault of the counsels, this Court imposes a cost of Rs.15,000/- upon Mr. P Sarmah, the learned counsel appearing on behalf of the petitioner, who is also the counsel of the plaintiffs before the learned Trial Court. The said amount be deposited by Mr. P Sarmah, the learned counsel appearing on behalf of the petitioners before the learned Trial Court on the date on which the written statement is directed to be filed i.e. on 15.06.2024.

9. It is further observed that deposit of the said amount of Rs.15,000/- shall be a condition precedent for accepting the written statement to the counter claim. It is made clear that in the circumstance, the counsel does not deposit the cost, the plaintiffs shall deposit the said amount and thereupon recover the same from the said counsel.

10. With the above, the petition stands disposed of.

11. Interim orders, if any, stands vacated.

JUDGE

Comparing Assistant